



OFFICE OF THE POLICE COMMISSIONER  
ONE POLICE PLAZA • ROOM 1400

CHAN

February 6, 2015

Memorandum for: Deputy Commissioner, Trials

Re: **Sergeant Phillip Connor**  
Tax Registry No. 932486  
20 Precinct  
Disciplinary Case No. 2011-5059

The above named member of the service appeared before Assistant Deputy Commissioner Robert W. Vinal on January 21 and 22, March 17, and April 1, 2014, charged with the following:

**DISCIPLINARY CASE NO. 2011-5059**

1. Sergeant Phillip Connor while on-duty and assigned to the 50<sup>th</sup> Precinct, on or about January 5, 2010 in the vicinity [redacted] in Bronx County, did fail to do his duty as an New York City Police Sergeant in that after observing members of the service using unnecessary physical force against a prisoner, Sergeant Connor failed to timely notify the Internal Affairs Bureau of the observed misconduct. *(As amended)*  
**P.G. 207-21**

**ALLEGATIONS OF  
CORRUPTION AND OTHER  
MISCONDUCT AGAINST  
MEMBERS OF THE SERVICE**

2. Sergeant Phillip Connor while on-duty and assigned to the 50<sup>th</sup> Precinct, on or about January 5, 2010 in the vicinity [redacted] in Bronx County, did fail to do his duty as an New York City Police Sergeant in that after becoming involved in an investigation at said location, Sergeant Connor failed to make entries in his activity log regarding said investigation. *(As amended)*  
**P.G. 212-08**

**ACTIVITY LOG**

3. Sergeant Phillip Connor, while on-duty, while assigned to the 50<sup>th</sup> Precinct and Housing Borough Manhattan, on or about January 19, 2010, and February 25, 2010, at locations known to the Department, did fail to cooperate fully and truthfully with an official Department investigation, by providing inaccurate, incomplete, or misleading answers to investigators during an official Department Interview. *(As amended)*  
**P.G. 203-10, Page 1, Paragraph 5**

**CONDUCT PREJUDICIAL**

4. Sergeant Phillip Connor while on-duty and assigned to the 50<sup>th</sup> Precinct, on or about January 5, 2010 in the vicinity [REDACTED] in Bronx County, did fail to do his duty as an New York City Police Sergeant and failed to properly supervise subordinate officers in that after observing members of the service using unnecessary physical force against a prisoner, Sergeant Connor failed to intervene or take action to stop the observed misconduct. *(As amended)*

**P.G. 203-10, Page 1, Paragraph 5**

**P.G. 202-17, Page 1**

**CONDUCT PREJUDICIAL  
PATROL SUPERVISOR  
DUTIES AND  
RESPONSIBILITIES**

In a Memorandum dated November 18, 2014, Assistant Deputy Commissioner Robert W. Vinal found the Respondent Guilty of Specification Nos. 1, 2 and 4 and Guilty in part of Specification No. 3 in Disciplinary Case No. 2011-5059. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

I have considered the totality of the issues and circumstances in this matter and deem that a lesser penalty is warranted. Therefore, the Respondent is to forfeit thirty (30) vacation days, as a disciplinary penalty.

  
William J. Bratton  
Police Commissioner





POLICE DEPARTMENT

November 18, 2014

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Phillip Connor  
Tax Registry No. 932486  
20 Precinct  
Disciplinary Case No. 2011-5059

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The above-named member of the Department appeared before me on January 21 and 22, March 17, and April 1, 2014, charged with the following:

1. Sergeant Phillip Connor while on-duty and assigned to the 50th Precinct, on or about January 5, 2010 in the vicinity [sic] [REDACTED] in Bronx County, did fail to do his duty as an New York City Police Sergeant in that after observing members of the service using unnecessary physical force against a prisoner, Sergeant Connor failed to timely notify the Internal Affairs Bureau of the observed misconduct. *(As amended)*

P.G. 207-21 – ALLEGATIONS OF CORRUPTION AND OTHER  
MISCONDUCT AGAINST MEMBERS OF THE SERVICE

2. Sergeant Phillip Connor while on-duty and assigned to the 50th Precinct, on or about January 5, 2010 in the vicinity [REDACTED] in Bronx County, did fail to do his duty as an New York City Police Sergeant in that after becoming involved in an investigation at said location, Sergeant Connor failed to make entries in his activity log regarding said investigation. *(As amended)*

P.G. 212-08 – ACTIVITY LOG

3. Sergeant Phillip Connor, while on-duty, while assigned to the 50th Precinct and Housing Borough Manhattan, on or about January 19, 2010, and February 25, 2010, at locations known to the Department, did fail to cooperate fully and truthfully with an official Department investigation, by providing inaccurate, incomplete, or misleading answers to investigators during an official Department Interview. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – CONDUCT PREJUDICIAL

4. Sergeant Phillip Connor while on-duty and assigned to the 50th Precinct, on or about January 5, 2010 in the vicinity [REDACTED] in Bronx County, did fail to do his duty as an New York City Police Sergeant and failed to properly supervise subordinate officers in that after observing members of the service using unnecessary physical force against a prisoner, Sergeant Connor failed to intervene or take action to stop the observed misconduct. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – CONDUCT PREJUDICIAL

P.G. 202-17, Page 1 – PATROL SUPERVISOR DUTIES AND RESPONSIBILITIES

The Department was represented by Joshua Kleiman and David Bernstein, Esqs., Department Advocate's Office, and Respondent was represented by Stephen Drummond, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

### DECISION

Respondent is found Guilty of Specification Nos. 1, 2 and 4 and Guilty in part of Specification No. 3.

### SUMMARY OF EVIDENCE PRESENTED

#### Introduction

It is not disputed that on January 5, 2010, Respondent was on duty, assigned to the 50 Precinct, performing a tour of duty of 1450 hours to 2347 hours [Department's Exhibit (DX) 1]. He was a sergeant supervising a Conditions Team comprised of seven police officers including Police Officers Juan Ventura and Denise Santos. At about 2000 hours, Respondent was inside the 50 Precinct with Ventura and Santos when he heard a



10-13 radio transmission that two officers had been shot in the vicinity of [REDACTED], the Bronx, which is located within the 52 Precinct. Respondent, Ventura and Santos immediately exited the stationhouse, entered a Department car and drove to [REDACTED] arriving there five to ten minutes after hearing the 10-13 call.

#### The Department Advocate's Case

The Department Advocate called Sergeant Neil Siegel and Police Officers Juan Ventura and Wayne Hayden as witnesses.

#### Sergeant Neil Siegel

Siegel, who is currently assigned to Internal Affairs Bureau (IAB) Group 54, conducted an investigation of the incident that took place at about 2000 hours on January 5, 2010 outside [REDACTED], the Bronx. Siegel ascertained that while narcotics detectives were making an arrest, a dog came after one of the detectives and the detective fired her weapon at the dog. The bullet fragments ricocheted striking the dog, one detective in the face and another in the leg. Because the 10-13 radio message that was transmitted by the detectives' supervisor from the scene only stated that officers had been shot, on duty officers who responded to [REDACTED] assumed that the detectives had been hit by shots fired by one or more perpetrators and not by "friendly fire." Siegel ascertained that numerous on duty members of the service immediately responded to the area in front of [REDACTED].

Siegel's investigation expanded when suspects who were being detained in front of [REDACTED] at the time that the 10-13 call was transmitted alleged that responding officers had used excessive force against them.

Several days after the shooting, a civilian delivered to the Bronx County District Attorney's Office (DA's office) a video recording (the video) which depicts the actions of officers who responded to the front of [REDACTED] on January 5, 2010 at about 2000 hours. The video, which was recorded from a window on a floor above ground level in the building directly across the street from [REDACTED], was admitted into evidence [Department's Exhibit (DX) 1]. The video depicts several rear-handcuffed prisoners face down on the pavement in front of [REDACTED]. Siegel identified one of the prisoners as Person A. Siegel identified Officer John Cicero on the video as the officer who is seen hitting Person A with his hands. Siegel testified that based on their actions as depicted in the video, Cicero was convicted of assault in the third degree and Green was convicted of attempted assault in the third degree.

Siegel obtained Respondent's activity log containing his entries for January 5, 2010 (DX 4). Respondent was interviewed by Siegel on January 15, 2010. Siegel subsequently conducted two official Department interviews of Respondent.

The first official Department interview of Respondent was conducted on January 19, 2010 [DX 2 and 2A are the audio recording and transcript of Respondent's official Department interview on January 19, 2010]. During this official Department interview, Respondent was shown the video (DX 1). Respondent identified himself, Ventura, and Santos on the video. Respondent stated that he instructed Ventura and Santos to pay



attention to anything being thrown from roofs or windows and to check underneath vehicles for weapons and contraband and evidence related to the incident. As Respondent watched the video he stated that although the video depicted a prisoner being punched and kicked, he did not witness that on the night of the incident.

During his January 19, 2010 official Department interview, Respondent was asked the following questions (Q) about his response to [REDACTED] on January 5, 2010 and he gave the following answers (A):<sup>1</sup>

(P. 23, Lines 12-17)

Q: Sergeant, do you remember at any point while you were there seeing any prisoners being struck by any members of the service whether it be punched or kicked or have their head slammed on the ground? Do you recall seeing that? Did you see that while you were at the scene?

A: No.

(P. 31, Lines 1-7)

Q: Stop it. A male can be heard making some type of yelling and grunting sound, and it appears that an officer is striking the male on the ground, and again you're behind them towards the wall in the general vicinity. Did you see that?

A: No.

Q: Do you remember hearing any screaming?

A: No.

(P. 34, Lines 15-19)

Q: Sergeant, while that was happening or right after that, what were you in fact doing on the video?

A: --like I said I was engaging in conversation trying, still trying to ascertain what was going on and what was, and what we were looking for.

(P. 34, Lines 20-21 P. 35 Lines 1-3)

Q: But as you sit here now, you see yourself walking away from the area that was happening, correct?

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<sup>1</sup> The Assistant Department Advocate (the Advocate) asserted that all of these answers were inaccurate, incomplete, or misleading answers.

A: I think I'm already, I think I'm already off screen, yeah at which point I was speaking with different people trying to ascertain what happened, what we were looking for.

(P. 37, Lines 19-21)

Q: Sure, sure tell me, okay. So again, this is the hand of an MOS. It's the upper left. I will rewind it a bit so you can see. If you watch this particular MOS it's apparent he punches and then kicks an individual on the ground. I will bring it back so you can see it. I will pause it at 1:37, did you observe that take place?

A: No.

(P. 41, Lines 2-4)

Q: Okay and you just indicated that you didn't see him get punched or kicked.

A: No, I didn't.

(P. 43 Line 21 – P. 44, Lines 1-9)

Q: As you sit here today, did you see that person get struck that night?

A: No.

Q: By either a hand or getting slammed or anything like that?

A: No.

Q: Had you seen that prisoner get struck that night, what would you have done?

A: I would have intervened and I would've immediately notified IAB, made proper notifications.

Siegel testified that based on statements made by Ventura, a second official Department interview of Respondent was conducted on February 25, 2010 [DX 3 and 3A are the audio recording and transcript of Respondent's official Department interview on February 25, 2010].

During this February 25, 2010 official Department interview, Respondent was asked the following questions (Q) about his conversations with other members of the



Department regarding the police response to [REDACTED] on January 5, 2010

and he gave the following answers (A):<sup>2</sup>

(P. 6, Lines 12-21)

Q: Okay, was there any conversation regarding the use of force by any member of the Police Department?

A: No.

Q: Did you make any statements to any of the officers that were indicative that you observed unnecessary force being used at the scene?

A: No.

Q: Did any officers make a statement to you that were indicative that they observed anything that rose to the level of unnecessary force to you?

A: No.

(P. 7)

Q: Now, did you ever have a conversation at any time with anybody from the Police Department regarding the fact that you felt, prior to you being PGed, to the fact that you felt that there was unnecessary force used at that incident?

A: No.

Q: Did you did you tell any member of the service that the force used against Person A or any of the people on the street was unnecessary and should not have been done?

A: No.

Q: Did you ever say the use of force was excessive?

A: No.

Q: Did you ever say something along the lines that one of the prisoners was already handcuffed and there was no reason for force to be used?

A: No.

Q: Did you ever specifically instruct your officers at that time not to ever hit somebody when they're handcuffed?

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<sup>2</sup> The Advocate asserted that all of these answers were inaccurate, incomplete, or misleading answers.

A: No.

(P. 12, Lines 2-3, 21 - P.13, Lines 1-2)

Q: Now, can you just-- the best you can, can you tell me exactly what Officer Ventura told you?

A: ..... And I didn't understand why he would even say that I said excessive when that's not even a word I would use.

On cross-examination, Siegel confirmed that over 30 on-duty officers responded to the 10-13 call. Siegel agreed that at an incident scene the highest ranking member who is present is in charge. Siegel confirmed that several sergeants and one lieutenant responded to the 10-13 call. Siegel identified a bald-headed officer in the video as Ventura.

Siegel confirmed that at Ventura's first official Department interview he was read the following warning: "These questions and answers resulting from this interrogation conducted pursuant to this procedure are confidential. They are not to be revealed or released to any person...." Siegel agreed that despite this instruction, Ventura had approached Respondent to inform him what Ventura had said at his official Department interview. Siegel confirmed that at his second official Department interview, Ventura initially stated that he did not observe any misconduct and that he only "saw a hard struggle." However, after a break in questioning during which he consulted with his attorney, Ventura changed his testimony and stated that he had heard screaming and that he had seen excessive force used. Siegel denied that IAB investigators had intimidated Ventura and asserted that Ventura had changed his testimony based on advice from his lawyer.



Siegel acknowledged that Ventura also changed his testimony as to where he and Respondent were physically located when the subject of excessive force was raised. Ventura initially said that he and Respondent had a conversation when they were outside of the precinct walking into the stationhouse when the words "excessive force" came up. However, after a break in questioning requested again by his attorney, Ventura stated that he and Respondent were inside their car when the excessive force was mentioned.

Siegel confirmed that he had recommended that Ventura be disciplined for failing to notify IAB about an excessive force incident and that only one other sergeant who was present at the scene has been charged with misconduct. Siegel agreed that the executive officer of the 52 Precinct has not been interviewed by Siegel regarding what he observed that day.

Siegel recalled Ventura was called in for another interview on September 19, 2013 to clarify that he had not been threatened in his previous interview. The intention was to have Ventura admit on the record that he had testified truthfully during his official Department interviews. By this time the investigation was complete and all officers involved had already been charged. Ventura was asked at this interview whether he had lied at a previous official Department interview. He responded that he had not. Siegel denied that the reliability of Ventura's statements needed to be evaluated.

On redirect examination, Siegel confirmed that one point in the video of the incident showed that there was nothing obstructing Respondent's view of Cicero and Person A. Siegel recalled that eight police officers and two sergeants (including Respondent) were served with charges and specifications regarding their actions at [REDACTED] on January 5, 2010.



Police Officer Juan Ventura

Ventura, a seven-year member of the Department who is currently assigned to the Crime Prevention Unit at the 50 Precinct, recalled that when he, Respondent and Santos arrived at [REDACTED], numerous emergency vehicles and officers were already at the scene. Ventura saw handcuffed prisoners on the ground. Respondent immediately instructed Ventura to canvass the area for contraband evidence. Ventura testified that when he was walking near where Cicero and Person A were, as he was "looking on the ground, through my peripheral I did see hand movements indicating different strikes. I never saw the strikes land." He saw Cicero pushing Person A's head into the pavement with two hands and he heard "a loud screaming of pain from Person A." Ventura continued to search for contraband evidence on the ground, and as he made his way over towards Person A's feet, he lit his flashlight towards Person A's waistband to see if anything had fallen out of his pockets. Ventura heard a voice that sounded like Respondent's say, "Juan, keep searching," so he kept searching the area for contraband. He testified that Person A's screams were so loud that he could have heard them if he had been a block away.

After Ventura finished canvassing the scene for further evidence, he made sure that the prisoners were placed in the transport van, as Respondent had instructed him. Ventura, Santos, and Respondent then got back into their vehicle. During the drive back, Respondent spoke to him and Santos about the dangers of 10-13s and that a shooting can happen any time. Ventura recalled hearing Respondent make a "quick statement" that he "wasn't satisfied with how the officers handled the prisoners on the scene." Ventura testified that Respondent also said something relating to excessive force by officers



regarding the prisoners and that when prisoners are in handcuffs “we don’t exceed that – we don’t rough up prisoners or any prisoners that are in handcuffs.” Though Ventura did not believe that the force Cicero had used was justified, he did not notify IAB about Cicero. As a result, he received a command discipline for failure to notify IAB and forfeited five vacation days.

Regarding his January 19, 2010 official Department interview, Ventura testified that he was never pressured to say anything untruthful either before the interview started or during the breaks in the interview. Ventura acknowledged that during the initial part of this interview, he was not “fully forthcoming,” because when he was asked if he had seen any misconduct, he “left it as just seeing a struggle” and because he also stated that he did not hear any screaming. The next day, Ventura saw Respondent at the 50 Precinct and initiated a conversation with him regarding his official Department interview but he could not recall the details of their conversation.

On cross-examination, Ventura testified that he considered Respondent an excellent supervisor who puts the interests of the officers he supervises above his own interests. Ventura acknowledged that even though he had been warned that if he lied at an official Department interview he could be dismissed from the Department, he made a conscious decision to lie during his January 19, 2010 interview. Ventura confirmed that he lied when he initially stated that he had observed only a forceful struggle between officers and prisoners, when he stated that his view was obstructed and that he did not see an officer strike a prisoner in the head, and when he stated that he did not recall hearing any prisoner cry out in pain. Ventura confirmed that after taking a seven-minute break during which he had a discussion with his attorney, when the interview recommenced he

admitted that he did hear screaming and he did see excessive force being used. Although he acknowledged that his initial description of what he heard and saw was not accurate, he asserted that he had not intentionally lied.

Ventura also confirmed that during his January 19, 2010 interview he initially stated that as he and Respondent were walking into the 50 Precinct after returning from the shooting scene, Respondent told him that "excessive force should not have been done." Ventura's attorney then requested another break. After returning from this break, Ventura's attorney stated that Ventura wished to "clarify and extend the location." Ventura then stated that Respondent had spoken about excessive force being used while they were in their car driving back to the 50 Precinct with Santos.

Ventura further confirmed that during his January 19, 2010 interview, he was instructed by his interviewers that the questions he was asked and the answers he provided during the interview were confidential and were not to be revealed or released to any person or agency outside the Department without prior written approval. Ventura conceded that he directly violated these instructions when he approached Respondent the next day and initiated a conversation with him about the interview.

On September 18, 2013, three years after the shooting and his first interview, Ventura was called in for another official Department interview. Ventura was informed that the interview was in regards to a conversation that occurred the day after his January 19th official Department interview. During this interview, a tape recording of his official Department interview January 19, 2010 was played for him and he was then asked if he had made any false statements in his prior that interview. He answered, "No."



Police Officer Wayne Hayden

Hayden, a seven-year member of the Department who is assigned to 50 Precinct, recalled that he responded to [REDACTED] on January 5, 2010 after the 10-13 call came over his radio. As Hayden approached the front of [REDACTED] he observed several handcuffed prisoners laying face down on the concrete curb. Hayden saw Cicero leaning over one of the handcuffed prisoners. It initially appeared to Hayden that Cicero was searching this prisoner and that "it looked like" the prisoner "was resisting" Cicero. However, when Hayden shined his flashlight at Cicero he saw that Cicero was "actually punching the individual and hitting his head off the concrete." Hayden testified that he touched Cicero on his shoulder. Cicero looked up and asked Hayden, "What's up?" Hayden then "kind of gave" Cicero "a look." Hayden explained that his facial "look" was an attempt to communicate to Cicero, "Relax; he's handcuffed; you don't have to do that."

Hayden, who was standing only two feet away from Cicero, then looked up and saw Respondent who was standing five to eight feet away. Respondent then ordered Hayden to go canvass for a gun and shell casings and to look under wheel wells and in sewer drains. Respondent had previously been Hayden's immediate supervisor but he was not supervising Hayden that night prior to their arrival in front of [REDACTED]. Hayden confirmed that he has viewed the video (DX 1) at least ten times.

On cross examination, Hayden confirmed that as of January 5, 2010, he had been a police officer for less than two years and that when he responded to the 10-13 call he did not know if officers had been shot by a perpetrator. He had approached Cicero because he wanted to help the officers who appeared to be searching prisoners but he

initially could not see what was going on because numerous officers were standing between him and Cicero and were blocking his line of vision.

On June 28, 2010, Hayden was questioned about this incident at an official Department interview which he and Ventura travelled to together. At this official Department interview, he stated that he had observed a white officer punching a prisoner three to four times. Hayden agreed that when the video was played for him (DX 1), the video only showed an officer punching a prisoner once.

Hayden confirmed that he did not report to anyone what he had seen Cicero doing. He explained that the reason he made no report was because "bosses" were present at the scene to handle the situation.

Hayden asserted that even though it was dark and noisy at the scene, he was able to make eye contact with Respondent and he was able to hear Respondent instruct him to canvass the scene for a gun and shell casings. Hayden confirmed that immediately prior to the commencement of this trial he had approached Respondent and told him that he did not believe Respondent should be punished for the actions of another member of the service.

On redirect examination, Hayden testified that when he saw Cicero striking the prisoner, the prisoner was screaming extremely loudly.

Respondent's Case

Respondent testified in his own behalf.

Respondent

Respondent, a ten-year member of the Department who is currently assigned to the 20 Precinct, recalled that on January 5, 2010, he heard the narcotics supervisor screaming over the radio as he called in the "10-13" and reported that two of his officers had been shot. As they approached the front of [REDACTED], Respondent instructed Ventura and Santos to canvass the area for any evidence of narcotics, casings, or guns. Respondent saw a narcotics sergeant, a lieutenant, and a captain. He approached the sergeant and asked, "Hey, what's going on? What do you need?" The sergeant only looked at him and then turned away to continue speaking with the lieutenant and the captain. Respondent did not know at that point that the two narcotics officers had been shot as the result of "friendly fire."

Consistent with his answers at his January 19, 2010 official Department interview, Respondent testified that he never saw any officer hitting a prisoner in front of [REDACTED] and that if he had seen this he would have intervened and stopped it. Respondent recalled that the scene was chaotic with sirens and radios blaring and people yelling. When the video recording (DX 1) was played for Respondent, he identified himself on the video. He described the lighting conditions at the scene as dark and he asserted that visibility at the scene itself was not as clear as it appears to be in the video. Respondent testified that he did not make any eye contact with Ventura or Hayden at any point at the scene. Consistent with his answers at his February 25, 2010 official



Department interview, Respondent testified that he did not have any conversation with Ventura after they left the scene regarding an officer hitting a prisoner. Respondent confirmed that he did not make any entry in his Activity Log regarding his response to the 10-13 call because he generally documents an incident in his memo book when he is "directly involved in" the incident. Since he did not recover any evidence, arrest anyone, or observe anything at the scene that he thought he would ever have to testify about, there was no need for him to make an entry. Respondent asserted that Patrol Guide Section 212-08 does not require him to write down in his Activity Log everywhere he goes. Rather, it is a discretionary tool. Since Respondent was supervising the Conditions Team, which is arrest-oriented, he used his memo book primarily to record those arrests that the team was directly involved in.

Respondent recalled that the day after his January 19, 2010 official Department interview, he was approached by Ventura at the 50 Precinct. Ventura, who "looked upset," asked to speak with him. Ventura stated that he had been called in for an official Department interview and that he was asked what he and Respondent had discussed inside their RMP on the trip back to the 50 Precinct from the scene. Ventura told Respondent that although he had initially answered, "Nothing," during a break in the interview his lawyer advised him that "they know something, you have to tell them something" so that Ventura could "save himself." When Ventura went back into the interview he stated that Respondent had told him that the scene was disorganized and that the situation was "excessive." Ventura also told Respondent that he thought he was going to be arrested and he implied that he felt threatened at his interview because his interviewers kept asking him the same questions over and over again in increasingly

louder voices. Respondent testified that because Ventura had admitted to him that he had lied, Respondent knew that he could not be trusted and that he needed to remove Ventura from his Conditions Team. Shortly after Respondent's conversation with Ventura, Respondent was told that he was being placed on modified assignment. Respondent was restored to full duty on December 30, 2013.

On cross examination, Respondent denied that he had ordered Hayden to go and search for evidence, he only directed Santos and Ventura to canvass for weapons and contraband. After he saw that a lieutenant, a sergeant, and a captain were present at the scene he gave no direct order to any officer to do anything at the scene. He did suggest that the prisoners be searched because it looked to him as if Person A was reaching for something, such as contraband or a weapon. Respondent told Person A to stop moving.

Respondent testified that he spoke with Sergeant Trujillo, his former supervisor, at the scene. Respondent was confronted with a statement he made at his first official Department interview that he did not know the names of any of the supervisors who were at the scene. Respondent testified that after he spoke with Trujillo, he walked to where Santos and Ventura were and told them that they were leaving. Respondent told Hayden to resume patrol because they were no longer needed at the scene.

Respondent confirmed that he did see force being used at the scene but that he did not believe that the force that was being used was unnecessary force. Respondent observed Cicero searching a prisoner at the scene. On the ride back to the 50 Precinct, Respondent vented to Santos and Ventura regarding how unorganized the crime scene was and how frustrated he was with the narcotics sergeant who should have told them that their help was not needed so that they could have left the scene earlier than they did.



Respondent agreed that although he has contacted IAB in the past when prisoners have been injured, he has never called IAB to report that an officer used excessive force against a prisoner.

### FINDINGS AND ANALYSIS

#### Specification Nos. 1 and 4

It is charged that on January 5, 2010 in the vicinity of [REDACTED], Respondent failed to do his duty as a sergeant in that after he observed members of the service using unnecessary physical force against a prisoner he failed to timely notify IAB of the observed misconduct and he failed to properly supervise subordinate officers in that he did not intervene or take action to stop the observed misconduct.

I find Respondent guilty because I credit Hayden's testimony that when he was only two feet away from Cicero, he got his flashlight out and saw that Cicero was "punching the individual and hitting his head off the concrete;" that the prisoner was screaming extremely loudly; that he saw Respondent standing only five to eight feet away; and that Respondent, instead of ordering Hayden to help him restrain Cicero, ordered Hayden to go canvass for a gun and shell casings and to look under wheel wells and in sewer drains.

That Hayden had no motive to falsely assert that Respondent was standing nearby when Cicero was punching a handcuffed prisoner and hitting the prisoner's head on the concrete curb is reflected by Hayden's testimony that immediately prior to the commencement of this trial he told Respondent that he did not believe Respondent should be punished for the improper actions of another member of the service.



Moreover, Hayden's testimony is supported by independent evidence: the video and audio thumb drive (DX 1) that was recorded on January 5, 2010 which depicts the sidewalk area in front of [REDACTED] minutes after a 10-13 radio message was transmitted from the scene which only stated that officers had been shot at [REDACTED]

The video clearly depicts a uniformed officer, who Siegel identified as Cicero, striking a handcuffed prisoner, who Siegel identified as Person A. The video supports Hayden's testimony that Respondent was standing nearby when Cicero was, as Hayden put it, "punching" Person A "and hitting his head off the concrete." Hayden's testimony that Person A was screaming extremely loudly is supported by the audio portion of the recording. The time marker on the video shows that when Person A begins to scream, at 41 seconds, Respondent, who is in the vicinity, turns away from Person A, and that, between 41 and 45 seconds, Respondent is seen looking back at Person A who is being struck at that point time. At 45 seconds, Respondent is seen, in the upper left hand corner of the video picture, walking away and, at 49 seconds, Respondent is no longer seen on the video. At one minute and 41 seconds, Respondent reappears on the video.

Since Hayden's testimony and the video establish that Respondent had to be aware of what Cicero was doing to Person A, and since it is not disputed that Respondent did not intervene or report this to IAB, Respondent is found guilty.

#### Specification No. 2

It is charged that while he was on-duty assigned to the 50th Precinct on January 5, 2010 in the vicinity [REDACTED], the Bronx, Respondent failed to do his duty

as a sergeant in that “after becoming involved in an investigation” at that location he failed to make entries in his activity log regarding his investigation.

Respondent’s activity log entries for January 5, 2010 were admitted into evidence (DX 4). Respondent admitted that he made no entry in his activity log regarding the 10-13 radio call or the fact that he responded to [REDACTED]. Respondent, nonetheless, asserted that he should be found not guilty of this charge as worded because he had no direct involvement in the investigation at the scene which was being conducted by a sergeant, a lieutenant, and a captain who were already present at the scene when he arrived at the scene.

I reject Respondent’s claim that he had no direct involvement in the investigation at the scene because he acknowledged that he had approached the sergeant and offered his assistance regarding the investigation by asking the sergeant, “Hey, what’s going on? What do you need?” Most significantly, Respondent corroborated Ventura’s testimony that he directed Ventura to canvass the area of the scene for any evidence of narcotics, shell casings or guns. I find that by doing this Respondent became involved in the investigation at the location and, thus, was required to make entries in his activity log regarding his investigation.

Respondent is found Guilty.

### Specification No. 3

It is charged that Respondent failed to cooperate fully and truthfully with an official Department investigation in that he provided inaccurate, incomplete, or



misleading answers to investigators during official Department interviews on January 19, 2010 and February 25, 2010.

At his January 19, 2010 official Department interview, when Respondent was asked if he had seen an officer striking a male who was on the ground and whether he heard any screaming, he answered, "No." (DX 2A, page 31, Lines 1-7) Since Hayden's testimony and the video establish that Respondent was aware that Cicero was striking a male who was on the ground and that this male (Person A) was screaming, I find that Respondent's denials constitute knowingly inaccurate answers and that, as a result, Respondent failed to cooperate fully and truthfully with an official Department investigation in that he provided inaccurate answers to investigators during his official Department interview on January 19, 2010.

With regard to Respondent's February 25, 2010 official Department interview, the Advocate asserted that Respondent provided inaccurate, incomplete, or misleading answers to his interviewers when he was asked about his conversation with Ventura after they left the scene. The only evidence the Advocate presented to prove that Respondent provided inaccurate, incomplete, or misleading answers to investigators during this interview was the testimony of Ventura. In his testimony at this trial, Ventura confirmed Seigel's testimony that Ventura had offered different versions as to what he saw at the scene and as to where he and Respondent were when Respondent spoke to him. Most significantly, Ventura admitted that even though at his official Department interview his interviewers had instructed him not to talk to anyone about the interview, he disclosed the content of his interview to Respondent the next day.



Based on the above, I find that because Ventura's credibility is open to question, his testimony, standing alone, is insufficient to support a finding that Respondent provided inaccurate, incomplete, or misleading answers to investigators during his official Department interview on February 25, 2010.

In conclusion, Respondent is found Guilty of that part of Specification No. 3 that alleges that he failed to cooperate fully and truthfully with an official Department investigation in that he provided inaccurate, incomplete, or misleading answers to investigators during an official Department interview on January 19, 2010.

#### PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 1, 2003. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found guilty of failing to do his duty as a sergeant by failing to intervene or take some other action to stop police officers from using unnecessary physical force against a handcuffed prisoner and he failed to timely notify IAB about the misconduct he had personally observed. Respondent then aggravated the misconduct he committed at the scene by making false and misleading statements at an official Department interview concerning his knowledge of what had taken place at the scene. Respondent's misconduct constitutes extremely serious misconduct.

The Advocate recommended that Respondent's penalty consist solely of the forfeiture of 30 vacation days.

In *Case No. 2010-2382* (May 15, 2013), a twelve-year sergeant who had no disciplinary record forfeited 35 vacation days after he pleaded guilty to failing to properly supervise a prisoner lodged in a holding cell and, after the prisoner attempted suicide, failing to make appropriate notifications that he had witnessed the prisoner's suicide attempt.

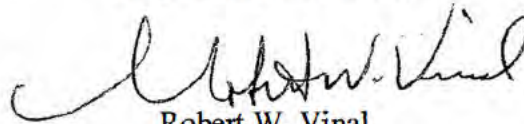
In that case, as here, the sergeant compounded his misconduct by making false and misleading statements at an official Department interview concerning his knowledge of the attempted suicide. However, in that case the incident the sergeant failed to properly supervise, failed to report and later lied about, involved a prisoner who used violence against himself inside a cell, whereas here the incident regarding which Respondent failed to intervene or take any other action, failed to report, and later lied about, involved officers using violence against a handcuffed prisoner on the street. Thus, Respondent's misconduct here constitutes more serious misconduct and merits a greater penalty.

In determining a penalty recommendation I have taken into consideration that Respondent is an 11-year member who has no prior formal disciplinary record and consistently good performance evaluations and who has reported sick only six times.



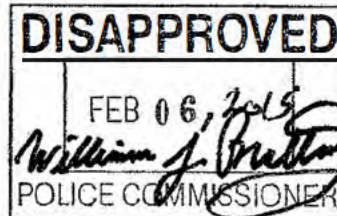
Therefore, it is recommended that Respondent be DISMISSED from the New York City Police Department; however, this penalty of dismissal will be held in abeyance pursuant to Section 14-115(d) of the NYC Administrative Code for a period of one year, during which time Respondent will remain on the force at the Police Commissioner's discretion and may be terminated at any time without a further hearing. It is further recommended that Respondent forfeit 40 vacation days.

Respectfully submitted,



Robert W. Vinal

Assistant Deputy Commissioner Trials



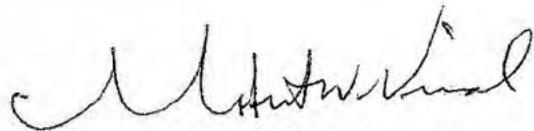
POLICE DEPARTMENT  
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
SERGEANT PHILLIP CONNOR  
TAX REGISTRY NO. 932486  
DISCIPLINARY CASE NO. 2011-5059

Respondent received an overall rating of 4.5 on his 2013 performance evaluation, 4.0 on his 2012 evaluation, and 4.0 on his 2011 evaluation. He has been awarded two Meritorious Police Duty medals and four Excellent Police Duty medals. [REDACTED]  
[REDACTED] He has no prior disciplinary record.

Respondent has monitoring records. He was placed on Level 1 Force Monitoring from Feb. 3, 2006 until May 31, 2006 for accumulating three or more CCRB complaints within a one year period. He was again placed on Level 1 Force Monitoring from May 4, 2007 until Nov. 7, 2008 for accumulating three or more CCRB complaints within a year. He was again placed on Level 1 Force Monitoring from Dec. 4, 2009 until March 17, 2010 for accumulating three or more CCRB complaints within a year. He was placed on Level 2 Force Monitoring on March 17, 2010 for accumulating three or more CCRB complaints within a year. This Level 2 Force Monitoring has not ended.

For your consideration.



Robert W. Vinal  
Assistant Deputy Commissioner Trials